

MDL
EXHIBIT 5

From: Dauphine, Dawn

Sent: Tuesday, November 20, 2007 1:33 PM

To: Haviland@HavilandLaw.com; Larry Crown; Jorge Franco

Subject: Swanston

Don, Larry, and Jorge:

As you know, on October 12, the parties stipulated to vacate the status conference and indicated that they would be filing within about 30 days a proposed stipulation to dismiss certain defendants. We have prepared the attached proposed stipulation and order for dismissal of certain defendants. Please confirm that these are acceptable and that you will be filing them with the court.

Thank you.

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10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

11 IN AND FOR THE COUNTY OF MARICOPA

13 ROBERT J. SWANSTON, individually and on behalf of himself and all others similarly situated,	14)	CV2002-004988
15 Plaintiff,	16)	STIPULATION FOR DISMISSAL OF CERTAIN DEFENDANTS WITHOUT PREJUDICE
17 vs.	18)	
17 TAP PHARMACEUTICAL PRODUCTS, INC.; et al.,	18)	(Assigned to the Honorable Janet E. Barton)
18 Defendants.	19)	

19 **WHEREAS** there exist overlapping claims and defendants in this case and in
20 *In re Pharmaceutical Industry Average Wholesale Price Litigation*, CA No. 01-
21 12257-PBS, MDL No. 1456 (D. Mass.) ("MDL NO. 1456"); and

22 **WHEREAS** to eliminate these overlapping claims and defendants, Plaintiff
23 Robert J. Swanston and the defendants below have agreed that Plaintiff will dismiss
24 without prejudice all claims against the overlapping defendants;

25 **THEREFORE** the parties agree as follows:

26

(1) the following defendants may be dismissed without prejudice:
Abbott Laboratories; Amgen Inc.; Zeneca, Inc.; AstraZeneca
Pharmaceuticals L.P.; AstraZeneca LP; Aventis Pharmaceuticals
Inc.; Hoechst Marion Roussel, Inc.; ZLB Behring, L.L.C. (f/k/a
Aventis Behring L.L.C.); Baxter International Inc.; Baxter
Healthcare Corporation; Bayer Corporation; Bristol-Myers
Squibb Co.; Oncology Therapeutics Network Corp.; Apothecon,
Inc.; Dey, Inc.; Fujisawa Healthcare, Inc.; Fujisawa USA, Inc.;
Immunex Corporation; Johnson & Johnson; Centocor, Inc.;
Ortho Biotech Products, L.P.; Pharmacia Corporation; Pharmacia
& Upjohn LLC, f/k/a Pharmacia & Upjohn, Inc.; Monsanto
Company; Schering-Plough Corporation; Warrick
Pharmaceuticals Corporation; Sicor, Inc.; Gensia, Inc., and
Gensia Sicor Pharmaceuticals, Inc.; and

(2) that subject to and specifically reserving all defenses, the parties agree that (a) defendants do not waive or release any defenses or arguments, including but not limited to, any statute of limitations and/or repose defenses, which could have been asserted prior to the effective date of the Order granting dismissal, and (b) any and all applicable statutes of limitations and/or repose are, from the effective date of the Order granting dismissal and for the pendency of MDL 1456, tolled and the reinstatement of any defendant to this action will not trigger a right of removal to federal court.

RESPECTFULLY SUBMITTED this ____ day of November, 2007.

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10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

11 IN AND FOR THE COUNTY OF MARICOPA

12 ROBERT J. SWANSTON, individually and) CV2002-004988
13 on behalf of himself and all others similarly)
14 situated,)
15 Plaintiff,)
16 vs.) **ORDER DISMISSING CERTAIN
17 TAP PHARMACEUTICAL PRODUCTS,) DEFENDANTS WITHOUT
INC.; et al.,) PREJUDICE**
18 Defendants.) (Assigned to the Honorable Janet E.
Barton)

19 Pursuant to stipulation of the parties and for good cause appearing, **IT IS**
20 **HEREBY ORDERED** as follows:

21 (1) the following defendants are dismissed without prejudice:
22 Abbott Laboratories; Amgen Inc.; Zeneca, Inc.; AstraZeneca
23 Pharmaceuticals L.P.; AstraZeneca LP; Aventis Pharmaceuticals
24 Inc.; Hoechst Marion Roussel, Inc.; ZLB Behring, L.L.C. (f/k/a
25 Aventis Behring L.L.C.); Baxter International Inc.; Baxter

Healthcare Corporation; Bayer Corporation; Bristol-Myers Squibb Co.; Oncology Therapeutics Network Corp.; Apothecon, Inc.; Dey, Inc.; Fujisawa Healthcare, Inc.; Fujisawa USA, Inc.; Immunex Corporation; Johnson & Johnson; Centocor, Inc.; Ortho Biotech Products, L.P.; Pharmacia Corporation; Pharmacia & Upjohn LLC, f/k/a Pharmacia & Upjohn, Inc.; Monsanto Company; Schering-Plough Corporation; Warrick Pharmaceuticals Corporation; Sicor, Inc.; Gensia, Inc., and Gensia Sicor Pharmaceuticals, Inc.; and

DATED this _____ day of _____, 2007

The Honorable Janet E. Barton